

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

IDENTITY SOFTWARE PTY., LTD,

Plaintiff,

v.

INMOMENT, INC.

Defendant.

CIVIL ACTION NO. 6:21-cv-481

JURY TRIAL REQUESTED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Identity Software Pty., Ltd., (“Identity Software” or “Plaintiff”) files this Complaint for Patent Infringement against Defendant InMoment, Inc. (“InMoment” or “Defendant”), and states as follows:

THE PARTIES

1. Identity Software is a proprietary limited company organized and existing under the laws of the Commonwealth of Australia. Identity Software’s principal place of business is 11 Bolingbroke Parade, Fairlight, NSW 2094, Australia.

2. Defendant InMoment is a corporation organized under the laws of the State of Utah. Its principal place of business is at 10355 S. Jordan Gateway #600, South Jordan, Utah 84095.

JURISDICTION AND VENUE

3. This Court has exclusive subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338(a) on the grounds that this action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including, without limitation, 35 U.S.C. §§ 271, 281, 284, and 285.

4. InMoment maintains a permanent physical presence within the Western District of Texas and has one or more regular and established places of business within the district including at least: 900 South Capital of Texas Highway, Suite 125 Austin, Texas 78746.

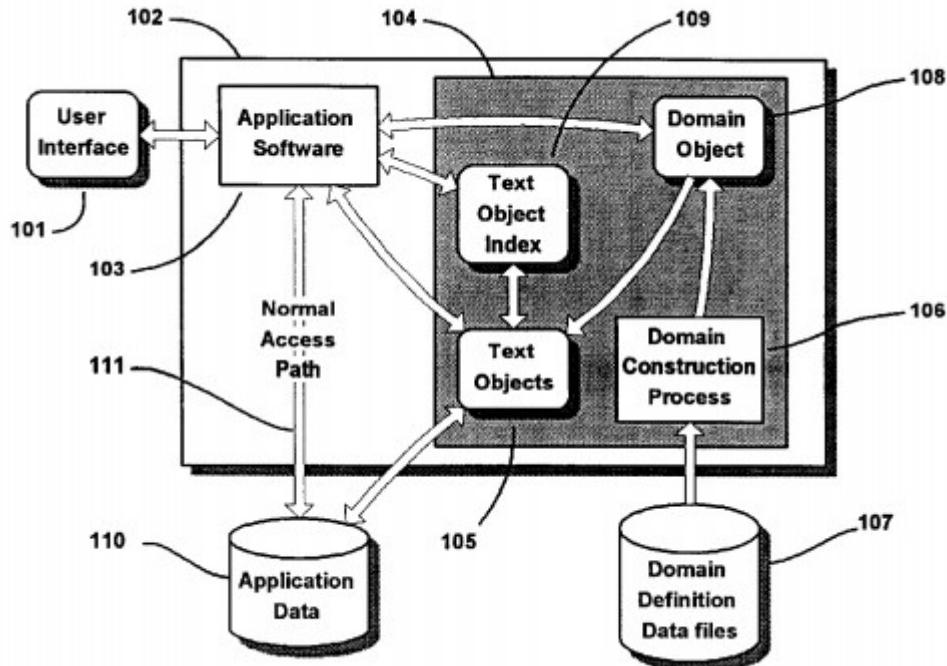
5. InMoment has placed infringing products into the stream of commerce, including at least the InMoment text analytics platform, knowing or understanding that such products would be used in the United States, including in the Western District of Texas.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1400(b) on the grounds that Defendant has committed acts of infringement in the district and has a regular and established place of business in the district.

THE '495 PATENT

7. Identity Software is the owner of all right, title and interest in and to U.S. Patent No. 6,272,495 (the “‘495 Patent”), entitled “Method and Apparatus for Processing Free-Format Data,” issued on August 7, 2001.

8. Exhibit A is a true and correct copy of the '495 Patent.
9. The '495 Patent issued from application no. 09/117,776 filed on April 22, 1998.
10. The Patent Office issued the '495 Patent on August 7, 2001, after a full and fair examination.
11. The '495 Patent is valid and enforceable.
12. The '495 Patent describes a method for processing free-format data into text objects, examining the content of the data, and determining attributes of the gathered data. Furthermore, the method disclosed includes a semantic and syntactic analysis of the data. This relationship-based analysis allows for more in-depth analytics of the data and allows for user queries to be executed wherein results are provided based on the semantic or syntactic relationships of the provided data. Overall, the disclosed method permits the gathering and analysis of data, independent of formatting, and allows for more intuitive search results based on language structure and significance.



INMOMENT

13. InMoment provides software and services directed to data gathering, natural language-based analysis of data, and the detection of semantic and syntactic relationships in data.

14. For example, InMoment provides the InMoment text analytics platform. This method provides data gathering, for both structured and unstructured data, data analytics, and provides for semantic and syntactic based searching through gathered data.

15. InMoment's text analytics platform further provides the ability to produce semantic and syntactic information and relationships from the data

gathered. These relationships aid in the production of results in response to a data query from the user.

16. Upon gathering the relevant data, InMoment's text analytics platform further utilizes analytics and analysis to determine weight and value of the data. This method further recognizes semantic and syntactic relationships among the data, regardless of format, and assists the user in creating query responses. The text analytics platform uses natural language analysis on varying formats of data to identify relationships in the data and facilitate queries through the gathered data.

17. The InMoment text analytics platform processes unstructured data and determines attribute and relationship information pertaining to that data.

Comprehension over Computation

Many text analytics solutions employ a statistical model, which counts words. What they tend to be missing is the use of a linguistic model using a natural language processing (NLP) engine. InMoment's NLP is powered by IBM's Watson technology and enables our computers to read customer comments and uncover the customer story. Both solutions have their merits, but a linguistic model excels at uncovering experiential customer data.

Source: <https://www.inmoment.com/blog/text-analytics-duck-test/>.

The screenshot shows a mobile-style interface for text analysis. At the top, a message reads: "Please tell us more about your most recent experience." Below this is a text box containing a customer review:

I refilled my prescription through the Health Rewards mobile app which was simple, but I didn't get a notification when it was ready! When I arrived, I picked up a few extra things I needed in the grocery section because there was a flash sale. Unfortunately, I had to wait in line forever to talk to the pharmacist even though the store was quiet.

To the right of the review, a green circle contains the text "3x More Data Points". Below the review, under the heading "INDUSTRY:", are four categories: retail, ecommerce, pharmacy, and custom tags. The "pharmacy" category is highlighted with a red border.

LAYERED TEXT ANALYTICS

Custom Models Without the Time or Expense

Accurately assigning tags and themes helps you understand emerging trends in written text, whether it's reviews, feedback, or call transcripts. When it comes to tagging models, you typically have two choices:

- **Industry Models** work well if your business fits neatly into a single industry or category; but they tend to miss brand-specific insights
- **Custom Models** are more accurate, but are expensive and time-consuming to build and maintain because they require constant re-tuning

That's why we offer the best of both worlds. Our Custom Layered Models allow you to choose and run multiple highly tuned industry models simultaneously. This means you get a custom and accurate model out-of-the-box which can be tweaked over time to align with your company's specific lexicon.

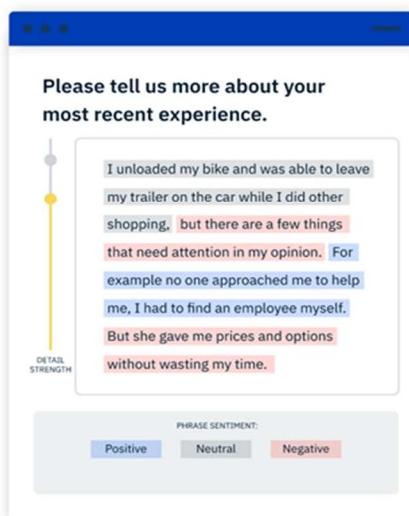
Source: <https://inmoment.com/text-analytics/>

MACHINE LEARNING SENTIMENT

Decipher and Decode Emotion

When you understand the difference between a minor nuisance and a major issue that puts customer loyalty and revenue at risk, you can identify—and replicate—the types of experiences that elicit unbridled joy and increase customer retention and spend. Enter InMoment's Adaptive Sentiment Engine.

Rules-Based Sentiment



- ✗ Based on rigid rules
- ✗ Requires manual intervention
- ✗ Accuracy never improves without continuous manual updates

Adaptive Sentiment Engine



- ✓ AI-driven—gets smarter over time
- ✓ Accuracy continually improves
- ✓ Ability to recognize new terms and phrases

Source: <https://inmoment.com/text-analytics/>

Unstructured feedback in the form of comments is invaluable in understanding and connecting with customers. Active Listening applies text analytics in a unique, patent-pending way to get more actionable data and make the feedback process a more engaging, positive experience for your customers.

Source:<https://www.businesswire.com/news/home/20150210005661/en/Listening-to-Customers-Just-Got-Easier%21-InMoment-Debuts-Patent-pending-Innovations-to-Provide-More-Actionable-Insights-Improve-the-Customer-Experience>

18. The Accused System and Method produces data relating to gathered information and analyzes elements and relationships of the data.

InMoment partnered with IBM and was the first company to use Watson's enterprise level cognitive capabilities. The company used Watson to build text-analytics models for all sorts of industries using the text feedback and unstructured feedback that the companies gathered.

Finding the sentiment in feedback

In a comment such as "The teller Diane, checked me deposit slip for my name, but I like it when I'm called by my first name, everything at the drive up went really quickly."

This gives six tags for analysis:

- speed of service
- staff
- banking supplies
- attentive
- mentions name
- friendly

The statements are also broken down into sentiment level phrases. Is the customer happy, sad or neutral? And what level of sentiment is this – strong, medium, weak etc. Being able to do this in real-time can provide great insight into the customer experience.

Source: <https://www.ibm.com/blogs/internet-of-things/know-customers/>

All Text Analytics Systems are NOT the Same

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Claiming that all **Text Analytics** solutions are the same is like saying all forms of transportation are the same. They're not.

Research your Text Analytics options. Ask your vendor, even Mindshare, all of these important questions. You'll be happy you did.

- Does the vendor's text analytics platform **categorize comments with similar-themed keywords and phrases** for comparing and trending? (For example, would the comments "lukewarm cheeseburger" and "the hamburger patty was cold" both be classified under "Hamburger" and "Temperature"?). Or would you have to mentally group terms such as "cold" and "lukewarm" to understand the scope of a problem?
- Does the vendor's text analytics accurately identify the key topics in **each comment individually as they come in**? Or does it require a large sample size and batch process?
- Does the vendor's product ensure the highest quality results by using custom-tuned **Natural Language Processing (NLP) semantic rules**? Or is it based on simple keyword extraction or statistical probabilities?
- Is their insight tagging **at least 90% accurate overall**? Or is it only slightly better than flipping a coin?
- Does the vendor's solution **minimize setup time with pre-tuned, industry-specific models**? Or is the vendor's solution generic, lacking industry domain knowledge and requiring extensive time and effort?
- Does their text analytics product **seamlessly integrate with your current EFM system** (Enterprise Feedback Management) or will you have to manage two separate systems? (E.g. Will you benefit from the **cost savings** of a fully integrated EFM and text analytics platform?)
- Does the product **automatically highlight correlations** between **structured survey data** (like location, time of visit, and satisfaction ratings) and **unstructured survey data** (open-ended comments and social media)? For example, would your product be able to find that the phrase "on ... cell phone" is highly correlated to poor customer service scores? Or will you have to connect the dots yourself?
- Does their system **send instant alerts** when a key issue is detected in a customer comment? For example, if a customer reports "slipping and falling" on a wet floor, is an alert email sent immediately to your corporate office? Or will you find out much later? Are their text analytics results reported in **real-time** and **available 24/7** to managers at all levels of your organization
- (permission-based)? Or will the results be stale? Can the reports be **pre-scheduled to email** to managers or must you always log in every time to get what you need?
- Do they have a turnkey product that can **identify the central themes and sentiment** in customer comments? For example, could it identify that the phrases "rude cashier" and "check engine light" are showing up frequently in negative context? Or do they require significant training, setup time, and resources to reach that insight?
- Can the vendor customize their solution to tag comments in **categories unique to your business**, such as products, programs, competitors, etc.? Or is it limited to measuring generic insights only?
- Can you **navigate directly to source comments** about key performance areas or are their results limited to high-level statistics?
- For example, assume that several feedback comments mention the cleanliness of floors in a store; can you instantly pull up those specific cleanliness comments to identify the root of the problem?
- Do they support **more than seven major languages**? Or are they limited to English and not much else?
- Is their solution fully up and running (already developed) and **ready to deploy within just weeks**, or are they selling something you'll have to wait months and years to ever see.
- Does a team of professional, **full-time text analytics experts** guide their text analytics solution? Or is their text analytics package just a piece of software with no support?
- Are they confident enough to show you an **unscripted live demo** of their solution? Will they allow you to test it with your own comments to see real results using a sample of your own data? Or are they hiding behind a staged presentation?

Source: <https://inmoment.com/blog/all-text-analytics-systems-are-not-the-same/>

19. The Accused Instrumentalities query based upon semantic and syntactic language information from the gathered data. This allows the user to create relevant queries and discover information related to the original free-format data.

20. Based on information and belief, the InMoment platform's advanced text analytics and machine learning program includes the application of semantic and syntactic information on the gathered data. By applying the analysis and machine learning functions of the platform, InMoment processes semantic and syntactic information about gathered data and is able to utilize this information in relation to search queries.

21. The Accused Instrumentalities process a plurality of free-format data and produces associated objects.

InMoment partnered with IBM and was the first company to use Watson's enterprise level cognitive capabilities. The company used Watson to build text-analytics models for all sorts of industries using the text feedback and unstructured feedback that the companies gathered.

Finding the sentiment in feedback

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Rules-Based Sentiment

PHRASE SENTIMENT:
Positive Neutral Negative

- ✗ Based on rigid rules
- ✗ Requires manual intervention
- ✗ Accuracy never improves without continuous manual updates

Adaptive Sentiment Engine

PHRASE SENTIMENT:			
Positive	Positive	Negative	Negative
Sentiment Score: 72 Confidence: 98%	Sentiment Score: 52 Confidence: 97%	Sentiment Score: -49 Confidence: 41%	Sentiment Score: -79 Confidence: 94%

- ✓ AI-driven—gets smarter over time
- ✓ Accuracy continually improves
- ✓ Ability to recognize new terms and phrases

Source: <https://inmoment.com/text-analytics/>

22. The Accused Instrumentalities produce text objects with identifiers based on the type and significance of the information. Queries based upon semantic and syntactic information may be executed.

23. Based on information and belief, the InMoment platform collects data and creates a text object index of the gathered information which includes identification of the data's attributes. After gathering data, the InMoment platform transforms the information in a manner facilitating queries relating to the semantic and syntactic information.

InMoment's CX Analyst Tool gives brands self-serve access to big customer data. It allows brands to access and analyze large quantities of customer feedback on the fly from multiple sources to create flexible, customized, and interactive views of customers' experiences.

Source: <https://www.destinationcrm.com/Articles/CRM-News/CRM-Across-the-Wire/InMoment-Introduces-Global-Text-Analytics-and-CX-Analyst-Tool-104066.aspx>

InMoment Announces Explore

InMoment today launched Explore, a self-serve analytics tool that provides instant access to unstructured customer data to help companies derive actionable insights from customer comments. Moreover, Explore aims to assist companies in avoiding survey fatigue by enabling them to derive real-time insights from existing customer data. According to the vendor's website, "the problem isn't getting more data, because your customers are giving you feedback in the form of voice, video, social, and survey comments. The real problem is getting intelligent and actionable insights from that data."

JD Nyland, executive vice president of product management at InMoment, says that the solution "leverages real-time text analytics to instantly search and sort unstructured customer comments for answers to questions without having to ask again." When brands are seeking customer feedback, their "first instinct is to send a survey, or send lots of surveys," Nyland says. "Today's enterprise DIY survey tools make it incredibly simple, fast, and cost effective to do just that."

But there's peril in this approach. "When done well, asking customers for feedback can build relationships and improve business outcomes," he says. "Over-surveying, on the other hand, can feel more like an interrogation than an honest inquiry, especially when customers have already addressed a brand's questions in previous surveys."

Explore aims to address this tendency by making it easier for companies to derive insight from the customer comments they already have. The solution scours various sources to find answers to question in real time and allows users to filter comments by topics such as products, services, employees, and competitors. "Explore can ingest customer comments from any source, including social posts, survey comments, voice and video comments, and more," Nyland says. "Explore can analyze data collected by InMoment, as well as data collected by the client or other vendors."

Source: <https://www.destinationcrm.com/Articles/ReadArticle.aspx?ArticleID=116263>

24. The Accused Instrumentalities include information associated with data objects to assign matching weights between data objects and to determine the significance of the data.

- Does the vendor's product ensure the highest quality results by using custom-tuned Natural Language Processing (NLP) semantic rules? Or is it based on simple keyword extraction or statistical probabilities?

Source: <https://www.inmoment.com/blog/all-text-analytics-systems-are-not-the-same/>

25. Based on information and belief, Defendant InMoment also implements contractual protections in the form of license and use restrictions with its customers to preclude the unauthorized reproduction, distribution and modification of its software. Moreover, on information and belief, Defendant InMoment implements technical precautions to attempt to thwart customers who would circumvent the intended operation of InMoment's products.

COUNT I – DIRECT PATENT INFRINGEMENT OF THE '495 PATENT

26. Identity Software realleges and incorporates by reference the allegations set forth above, as if set forth verbatim herein.

27. InMoment has directly infringed the '495 Patent in violation of 35 U.S.C. § 271(a) by performing methods, including its own use and testing of the InMoment text analytics platform (an “Accused Product”) that embodies the patented inventions of claims 1, 7, and perhaps other method claims of the '495 Patent.

28. InMoment's infringing Accused Products execute a "software as a service" collection and identification of data program. The platform is hosted by InMoment's servers and the infringing method is applied through InMoment software. The platform utilizes semantic and syntactic "text analytics" to gather unstructured data, provide semantic and syntactic information about the data, and generate the ability to respond to queries in reference to the data, in a manner which infringes upon the '495 Patent.

29. The Accused Products satisfy each and every element of each asserted claims of the '495 Patent either literally or under the doctrine of equivalents.

30. InMoment's infringing activities are and have been without authority or license under the '495 Patent.

31. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff during the term of the patent as a result of Defendant's infringing acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court, pursuant to 35 U.S.C. § 284.

JURY DEMAND

32. Plaintiff hereby demands a trial by jury of all issues so triable pursuant to Fed. R. Civ. P. 38.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the '495 Patent have been infringed, either literally and/or under the doctrine of equivalents, by Defendant;
- B. An accounting and an award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement, together with pre-judgment and post-judgment interest and costs pursuant to 35 U.S.C. § 284;
- C. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and expenses in accordance with 35 U.S.C. § 285; and
- D. Any further relief that this Court deems just and proper.

Respectfully submitted this 7th day of May 2021.

By: /s/ Cabrach J. Connor
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